

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM NO. 12
CAUSE NO. 49D12-1111-PL-043881

THE METROPOLITAN SCHOOL)
DISTRICT OF WAYNE TOWNSHIP,)
MARION COUNTY, INDIANA,)

Plaintiff,)

vs.)

TERRY J. THOMPSON,)

Defendant.)

FILED

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JAN 25 2012

Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

ANSWER, ADDITIONAL DEFENSES AND COUNTER-CLAIM
OF DEFENDANT TERRY J. THOMPSON

ANSWER

I. INTRODUCTION

For his answer to that section of plaintiff's Complaint titled INTRODUCTION, defendant Terry J. Thompson ("Thompson"), states:

What can only be referred to as the fiction alleged and entitled "Introduction" in Plaintiff's Complaint is denied. The reality is that as a result of hard work, dedication, and practical applications of educational wisdom with common sense, the School District thrived during Dr. Thompson's administration. While Dr. Thompson brought special talents to the position of Superintendent, he also surrounded himself with equally dedicated and hardworking professionals. Thompson was compensated for these efforts and his successes with a yearly income based upon written contracts for each of the years he served. The series of contracts between 1996 to 2010 were the result of negotiations and agreements between the School Board for the Metropolitan School District of Wayne Township (the "Board" and the "District") and its attorneys as well as Dr. Thompson and his attorneys. Everything is in writing and specifically

signed by the Board and separately by the Board's primary attorney. Nothing in any of these contracts is complicated to any individual who is familiar with school administrator compensation. Further, the Board's attorney is a legal expert in this kind of compensation. If any individual Board Member did not understand a particular provision, all that Member needed to do was consult with the School Board's attorney.

While Thompson has always believed he was treated fairly, his taxable income is unusual in 2010 only because he was to be paid in that one year all of the deferred benefits he had earned over a long career. There has been no disservice to the citizens of Wayne Township as a result of Dr. Thompson's employment contracts or in any manner in which Dr. Thompson successfully fulfilled his contract obligations. All of the monies spent by the District on Dr. Thompson has been money well spent. It is because of Dr. Thompson's unique talents that every dollar spent to retain Dr. Thompson resulted in many multiples of these dollars in savings to the District.¹

What has been a disservice to the citizens of Wayne Township is the manner that the Board Members handled the criticism directed at them and to the contracts they negotiated with Dr. Thompson. Rather than acknowledging that it had negotiated and signed a series of contracts with its Superintendent that brought significant benefit to the District, the Board has instead, individually and collectively contended that it did not read the contracts and has pretended that it did not have a well-qualified attorney representing it who also executed the contracts along with the Board. After taking a position that defies all common sense, the Board then set a course of actions that is a waste of the monetary resources of the District.

¹ Dr. Thompson's architectural experience and business training is recognized by the Board to have saved the District millions of dollars, an amount that itself saved the District many multiples of Dr. Thompson's income during his entire 14 years with the district.

This inappropriate expenditure began with an investigation into events that required no investigation. The cost of that useless investigation is reported to be in excess of \$200,000. It is important to note here that any high school student in the Wayne Township District is old enough and wise enough to tell the Board that:

1. You read legal contracts before you sign them;
2. You do not sign contracts that have terms you do not understand; and
3. If you enter into an agreement, you honor it.

All of which could have been learned without any cost to the District. Then, after incurring \$200,000 on this unnecessary and inappropriate investigation, the Board continued to compound the harm to the District by having expended an estimated \$200,000 in additional attorney's fees in preparation of this ill brought lawsuit – which brings the total amount spent by the District on attorneys to \$400,000. Of equal concern are the reports that the Board's agreement with its current counsel is open ended, resulting in even more expenditures for the District on a monthly basis. Unlike the money spent on excellent school administration benefiting education of the District's children, the money spent this last year and now being spent by the District is an administrative waste to the citizens of Wayne Township and an inappropriate attempt to disguise the Board's multiple shortcomings.

II. THE PARTIES AND VENUE

For his answer to that section of plaintiff's complaint titled THE PARTIES AND VENUE, Thompson states:

1. Plaintiff Metropolitan School District of Wayne Township (the "District") is the statutorily created community school corporation for Wayne Township, Marion County, Indiana.

ANSWER: Thompson admits the material allegations contained in paragraph 1 of plaintiff's Complaint.

2. Defendant Terry J. Thompson, Ed.D. ("Thompson") was the District's Superintendent from April 8, 1996 until December 2010. During most of that period, he was a resident of Marion County. Upon information and belief, he presently is a resident of Hamilton County, Indiana.

ANSWER: Thompson admits the material allegations contained in paragraph 2 of plaintiff's Complaint and admits that during all of "the period" he was a resident of Marion County.

3. All of the events relating to this action occurred in Marion County, Indiana.

ANSWER: Thompson is without sufficient information to admit or deny the material allegations contained in paragraph 3 and therefore denies the material allegations contained in paragraph 3 of plaintiff's Complaint.

III. FACTS

For his answer to that section of plaintiff's Complaint titled FACTS, Thompson states:

4. Wayne Township is on the west side of Indianapolis in Marion County, Indiana, with a population of approximately 134,542.

ANSWER: Thompson admits the material allegations contained in paragraph 4 of plaintiff's Complaint.

5. The District provides public education for kindergarten through twelfth grade for residents of Wayne Township, currently educating approximately 16,000 students each year.

ANSWER: Thompson admits that the District provides public education preschool through an associates college and educates approximately 16,000 student per year.

A. The Roles and Duties of the Parties
1. The Board of Education

6. The District is governed by a seven-person Board of Education (the "Board") and each of the Board members is separately elected by the citizens of Wayne Township.

ANSWER: Thompson admits the material allegations contained in paragraph 6 of plaintiff's Complaint.

7. A school district's board represents governance at its most fundamental level. School board members spend long hours to serve their communities and are dedicated to improving the quality of the education of children in their communities.

ANSWER: Thompson admits only that many school board members are dedicated public servants, are concerned with educational quality and spend long hours. Thompson is otherwise without sufficient information to admit the material allegations contained in paragraph 7 and therefore denies the remaining allegations contained in paragraph 7 of plaintiff's Complaint.

8. The duties of school boards (including Plaintiff) are complex, complicated and cannot be performed without the assistance from and reliance upon multiple experts trained and educated in education, law, tax, employee benefits, finance, construction, property management and other professional fields.

ANSWER: Thompson admits only that school boards, including that of the Metropolitan School District of Wayne Township, Marion County, Indiana have various duties and should and often do rely upon various experts, including experts in law, who can reasonably be expected to render expert advice concerning contract. Thompson is otherwise without sufficient information to admit or deny and therefore denies the remaining material allegations contained in paragraph 8 of plaintiff's Complaint.

9. The Board's statutory duties include, but are not limited to: (a) taking charge and managing the conduct of the educational affairs of the school corporation; (b) the establishment, acquisition, construction and maintenance of libraries, facilities, property, real estate, real estate improvements, buildings, additions to buildings, gymnasiums, auditoriums, playgrounds, playing and athletic fields, offices, warehouses, landscaping, walks, parking areas, roadways, and facilities for power, sewer, drinking water and other utilities; (c) the acquisition of personal property necessary for school purposes, including buses, motor vehicles, appliances, books, furniture and supplies; (d) the employment, contracting, and discharge of superintendents, supervisors, principals, teachers, librarians, athletic coaches, business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides, and educational and other professional consultants; (e) the approval and payment of all salaries and compensation of all personnel, consultants, advisors and professionals; (f) the implementation of data processing and computer service personnel and support, including personnel responsible for the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of payroll, and other personnel or services as necessary for school purposes; (g) the safe transportation of children to and from school; (h) providing a lunch program (including the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms and the hiring of personnel to operate the lunch program); (i) the approval and purchase of textbooks; (j) making budgets, appropriating funds, and the disbursement of the moneys of the school corporation in accordance with applicable law; (k) the review and approval of insurance contracts including employee health plans; (l) approving applications and the execution of documents necessary for the receipt of money, grants and property from state government, federal government and any other source; (m) the preparation, enforcement,

amendment or repeal of rules, regulations, and procedures for the government and management of the District's schools, property, facilities and activities of the school corporation, the school's agents, employees and pupils and for the operation of the governmental body including the creation of policy handbooks, bylaws, and rules and regulations manuals; (n) the approval of all financing including the issuance of bonds, tax warrants, and banking agreements; (o) the initiation and defense of any potential or actual litigation involving the District including the selection of legal counsel and the management of those matters; (p) the review of and rendering the final decisions relating to the expulsion of students; and, (q) the security and safety of personnel and students throughout the District's school system.

ANSWER: Thompson admits only that Board duties are many and various and include any number of the duties enumerated in paragraph 9. Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 9, and therefore denies the remaining material allegations contained in paragraph 9 of plaintiff's Complaint.

10. These monumental tasks must be accomplished during scheduled board meetings which must be conducted in compliance with Indiana law and its open-door policy.

ANSWER: Thompson admits only that scheduled Board meetings must be conducted in compliance with Indiana law, but denies the remaining material allegations contained in paragraph 10 of plaintiff's Complaint, including that all tasks must be accomplished during regularly scheduled Board meetings.

11. In addition to the Board meetings, the members regularly attend bid openings, school events, parent-teacher-administrator meetings, graduations, and a multiple of other events. Board members' addresses, telephone numbers and email addresses are public and they often

receive and respond to inquiries and complaints from citizens within Wayne Township and elsewhere requesting information.

ANSWER: Thompson admits only that various Board members performed certain of the duties listed in paragraph 11 and that Board members from time to time receive and respond to inquiries. Thompson denies the remaining material allegations contained in paragraph 11 of plaintiff's Complaint.

12. Board members receive an annual payment of \$2,000 and \$112 per each attended regularly scheduled Board meeting (up to a certain prescribed limit).

ANSWER: Thompson admits only that the allegations contained in paragraph 12 of plaintiff's Complaint describes certain elements of compensation received by Board members.

2. The Superintendent

13. The most important decision a school board makes is the employment of its superintendent. The superintendent, not the board, is the person who makes decisions on a daily basis and supervises all personnel.

ANSWER: Thompson admits the material allegations contained in paragraph 13 of plaintiff's Complaint.

14. The superintendent is the Board's chief expert on the management of a school system and is the board's agent who the board must, by necessity, rely upon in communicating and carrying out board decisions and policies and ensuring that the school district is operated with integrity and in a professional manner. The superintendent is the public face of the school district. A superintendent is in a special position of trust vis-a-vis the board, the school system and the community.

ANSWER: Thompson admits only that a superintendent of schools is a school system's chief administrator, acts at the board's pleasure and is generally responsible for

implementing board decisions and policies. To the extent that the material allegations contained in paragraph 14 of plaintiff's Complaint implies that a board need not perform its functions, including being thoroughly familiar with contracts of employment executed by and between a board and its superintendent, Thompson denies such an allegation. Thompson is without sufficient information to admit or deny all remaining material allegations contained in paragraph 14 as those allegations are phrased, and therefore denies these remaining material allegations contained in paragraph 14 of plaintiff's Complaint.

15. A school board acts as a group. Board members do not act individually. Decisions are made in a group during officially called meetings. There is a very clear protocol followed by competent and professional boards and superintendents. Because of the complex and varied issues facing a school district, boards and their superintendents are required to openly and honestly communicate about all issues. Boards should not undermine their superintendents. If individual board members on their own communicate directly with the superintendent's staff, teachers, or others under the supervision of the superintendent, it is confusing to the staff and mixed messages are sent and received by all administrators, teachers, other employees, parents, students, and taxpayers.

ANSWER: Thompson generally admits the broad and vague material allegations in paragraph 15, but denies any allegation that Board members do not have individual responsibilities. Thompson is otherwise without sufficient information to admit or deny the material allegations contained in paragraph 15 as phrased and therefore denies the remaining material allegations contained in paragraph 15 of plaintiff's Complaint.

16. Superintendents are educated professionals licensed in the education of children and the management of a school system. Board members, by necessity, rely upon the superintendent to keep them fully informed about important matters affecting the school system.

ANSWER: Thompson admits that superintendents are educated and licensed professionals and that board members rely upon the superintendent to keep them fully informed in connection with various matters affecting the school system. Thompson denies any implication that it is the responsibility of a superintendent to act as the board's representative with regard to contract negotiations involving the superintendent himself. Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 16 as phrased and therefore denies the remaining material allegations contained in paragraph 16 of plaintiff's Complaint.

17. The fundamental duty of a superintendent is to build trust and act with integrity in all dealings with a board. Superintendents are well aware of their special position of trust and authority, and their accompanying obligation to communicate fully and honestly with each board member.

ANSWER: Thompson admits that one of the many duties of a superintendent is to build trust, to act with integrity and to communicate fully and honestly with a school board. Thompson denies that those duties include obligating school board members to work with their legal counsel in connection with contract negotiations as to his own employment contract. The Board made it very clear to Thompson that as to his employment contract, the Board and Thompson had an adversary relationship. Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 17 and therefore denies the remaining material allegations contained in paragraph 17 of plaintiff's Complaint.

18. Superintendents are taught that an effective, trusting relationship between the board and the superintendent takes priority and that building and maintaining a governance team focused on moving a school district forward effectively must be the centerpiece of the superintendent's daily work.

ANSWER: Thompson is without sufficient information to admit or deny the material allegations contained in paragraph 18 as phrased and therefore denies the remaining material allegations contained in paragraph 18 of plaintiff's Complaint.

19. It is the superintendent's duty to ensure that the board makes informed decisions. Superintendents must provide information, prepare supporting materials, and make detailed presentations so board members can make well-informed decisions. If the board is not sufficiently questioning a superintendant about a matter of importance, it is the superintendent who must assist, train and support the board in acquiring techniques so that informed decisions can be made.

ANSWER: Thompson incorporates by reference as if fully set out herein his answer to paragraph 19 of plaintiff's Complaint. Thompson denies any implication that it was his responsibility, or is the responsibility of any superintendent, to assist, train, or support a board in connection with contract negotiations for a contract to which the superintendent himself is a party.

20. The superintendent is also the key person responsible for communicating budget issues to the board and others. That includes a duty to ensure that the board understands the compensation being paid to the highest compensated professionals in the system. They have a duty to ensure that the Board understands material items in a budget. Multi-million dollar contracts are material.

ANSWER: Thompson admits that superintendents have certain responsibilities for communicating with regard to budget issues. Thompson denies that a superintendent has a duty “to ensure that the Board understands” a contract which it has ample opportunity to negotiate, to review, and to submit to an attorney retained by the school district. Thompson incorporates by reference as if fully set out herein his answers to paragraphs 16, 17, 18 and 19 and is otherwise without sufficient information to admit or deny the material allegations contained in paragraph 20 of plaintiff’s Complaint.

21. Superintendents well understand that it is their role to ensure that a board must be fully informed and receive critical and important information prior to a public hearing.

ANSWER: Thompson incorporates by reference as if fully set out herein its answers to paragraphs 16, 17, 18, 19 and 20 in plaintiff’s Complaint. Thompson denies that it was somehow his responsibility to ensure that the Board read a series of readily available contracts or to consult with its attorneys.

22. It is axiomatic that superintendents must avoid surprising the board with critical and important information that should have been communicated prior to a public hearing. The superintendent has a clear duty to protect the board from surprises.

ANSWER: Thompson admits that it is desirable that superintendents avoid surprising boards with information that is both critical and should be communicated in advance of public hearings. Thompson denies any implication that critical information was not communicated and further denies that the allegations contained in paragraph 22 of plaintiff’s Complaint accurately characterizes the duties of a superintendent.

23. Prior to placing an item for action on the board agenda, the superintendent is expected to conduct thorough research on the history, perceptions, financial obligations and expectations of the board concerning an issue of importance.

ANSWER: Thompson denies the allegation that before placing any item on a board agenda, the superintendent is obligated by law or otherwise to conduct thorough research on the board's history, the board's perceptions or otherwise. Thompson is without sufficient information to admit or deny all other material allegations in paragraph 23 as those allegations are phrased and therefore denies the remaining material allegations contained in paragraph 23 of plaintiff's Complaint.

B. The District's 1995-1996 Search for a New Superintendent

24. In 1995, the District's superintendent resigned and the Board initiated an intensive search for a new superintendent. The Board recognized that the District was facing enormous changes. The school population and community were dramatically changing and Wayne Township's educational programs needed to be improved to reflect the demands of the community for a better educational system. The Board was also acutely aware that it needed to embark upon a major construction and renovation program.

ANSWER: Thompson generally admits that the board initiated a search for a new superintendent and that Board members undoubtedly recognized certain changes and challenges. Thompson is otherwise without sufficient information to admit or deny the material allegations contained in paragraph 24 of plaintiff's Complaint.

25. Between December 4, 1995 through February 22, 1996, the Board held twenty-one (21) separate executive sessions to fill the District's vacant superintendent position.

ANSWER: Thompson is without sufficient information to admit or deny the material allegations contained in paragraph 25 of plaintiff's Complaint.

26. The first group of candidates included professionals who were already superintendents. No clear candidate emerged and thus, the Board reviewed a second tier of candidates including those who were or had been assistant superintendents, including Thompson.

ANSWER: Thompson is without sufficient information to admit or deny the material allegations contained in paragraph 26 of plaintiff's Complaint.

27. Thompson was interviewed by the Board on several occasions. During the interview process, Thompson became aware that the Board intended to change virtually everything about its system — including its academic, vocational and other programs and improvements all of its facilities. He also knew that the Board members wanted a very open administration and clear communication system. Thompson assured the Board that he would conduct an open administration with a full and complete dialogue with the Board and community.

ANSWER: Thompson admits that he was interviewed on several occasions. Thompson recalls that during the interviewing process he and Board members discussed the various academic and other programs and improvements of facilities. Thompson is otherwise without sufficient information to admit or deny the material allegations contained in paragraph 27 of plaintiff's Complaint.

28. Following the intensive search and interview process, on February 22, 1996, the Board met and unanimously voted to employ Thompson as Superintendent.

ANSWER: Upon information and belief, Thompson admits the material allegations contained in paragraph 28 of plaintiff's Complaint.

C. Thompson's Contracts and Compensation
1. Thompson's First Contract (1996)

29. Thompson's initial contract, dated February 26, 1996, covered the period from April 8, 1996 through June 30, 1999.

ANSWER: The terms and provisions of Thompson's initial contract speak for themselves; however, upon information and belief, Thompson admits the material allegations contained in paragraph 29 of plaintiff's Complaint.

30. The contract was drafted by two separate Indianapolis law firms. Mary Beth Braitman ("Braitman"), a partner at one of the largest Indiana law firms, Ice Miller LLP ("Ice Miller") represented Thompson. The District's school attorney was Jon M. Bailey ("Bailey"), a partner at Bose McKinney & Evans LLP ("Bose McKinney"). Bose McKinney had served as the District's school counsel for decades. A school attorney works closely with the Board, the Superintendent and administrators on a variety of legal issues facing the District.

ANSWER: Thompson admits that a school attorney works closely with the Board, with the superintendent and with administrators on a variety of issues, admits that Thompson was required to employ his own attorney and agreed that the Ice Miller lawfirm was acceptable, and admits that Jon M. Bailey, a partner at Bose McKinney & Evans LLP was the school's attorney. Thompson is otherwise without sufficient information to admit or deny the material allegations contained in paragraph 30 of plaintiff's Complaint.

31. Thompson's first 1996 contract was a very generous contract and would serve as a template for following contracts. Its provisions included:

- a. Thompson would be required to work 227 working days per school year ("working days");
- b. Thompson would receive 9 sick leave days per year which were intended to be used for personal or family illness and not intended as deferred compensation;

- c. Thompson could accumulate unused sick leave days from year to year, but could not exceed a cap of 233 days;
- d. Thompson could transfer up to 50 sick leave days accumulated in his prior employment, but those days were subject to the cap of 233 days; and,
- e. Thompson would receive \$100,000 salary for the first school year of employment increasing to \$119,187 by July, 1999 – a 19% increase in salary over a three year period.

ANSWER: The terms and provisions of the 1996 contract speak for themselves.

Thompson admits, upon information and belief, that certain provisions of the contract appear to be set forth in subparagraphs a, b, c, d, and e. Thompson denies that the 1996 contract was “a very generous contract”; instead, it was an initial contract as to an unproven superintendent. Thompson is otherwise without sufficient information to admit or deny all other material allegations contained in paragraph 31 of plaintiff’s Complaint.

32. Thompson's contract allowed for substantial additional benefits including group health, dental, term life and long-term disability insurance policies for only a \$1 annual premium, an additional \$500 per year for a health examination, \$600/per month auto allowance, a credit card for the purchase of gas, \$5,000 in moving expenses, and reimbursement for business and professional expenses.

ANSWER: The terms and provisions of the 1996 contract speak for themselves. The \$1 annual premium for health, dental, term life, and long-term disability insurance policies represented the same premium charged to all other Wayne Township administrators and Board members. Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 32 of plaintiff’s Complaint.

33. The 1996 contract also provided for the payments of contributions to the Indiana State Teachers' Retirement Fund ("TRF") that would otherwise be required to be paid by the

Superintendent and additional retirement benefits allowable under Section 403(b) of the Internal Revenue Code.

ANSWER: Thompson admits the material allegations in contained paragraph 33 of plaintiff's Complaint.

34. Thompson understood that his contract was a public record under Indiana law.

ANSWER: Thompson admits the material allegations contained in paragraph 34 of plaintiff's Complaint.

2. The Intense and Substantial Work in the District

35. The Board and its new Superintendent went to work. Immediately, a feasibility study was made regarding the school facilities and multiple other improvements were underway.

ANSWER: Thompson admits the material allegations contained in paragraph 35 of plaintiff's Complaint.

36. From 1996 through 2003, together the Board and Thompson built, expanded and remodeled almost every facility in the District, improved educational standards, created new academic programs and, as the Board anticipated, changed and improved almost every aspect of the District's programs and facilities.

ANSWER: Thompson admits the material allegations contained in paragraph 36 of plaintiff's Complaint.

37. For example, by April, 1997, the Board was reviewing and approving contracts for the construction, expansion or improvement of its high school and four elementary schools.

ANSWER: Thompson admits the material allegations contained in paragraph 37 of plaintiff's Complaint.

38. During this period, the Board approved thousands of contracts, programs, grant applications, bond and financing agreements, policies, employment agreements, bidding

petitions, consulting and professional agreements and multiple other documents and actions required to operate the school system.

ANSWER: Thompson admits the Board participated in school business but Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 38 of plaintiff's Complaint and therefore denies the remainder of the allegations in paragraph 38.

39. When it came time to select and engage project managers and construction companies for purposes of renovating existing buildings and constructing new buildings, the Board relied upon the advice and recommendations of Thompson. At Thompson's urging and recommendation, the Board selected the project managers and/or construction companies based upon bid processes and by Thompson's recommendation.

ANSWER: While Thompson admits that he had a significant role in construction projects, due to the broadness of the material allegations contained in paragraph 39 of plaintiff's Complaint along with the manner that these allegations are phrased, Thompson denies the remainder of the allegations contained in paragraph 39.

40. The District, upon Thompson's request and recommendation, appointed Ice Miller as the District's bond counsel to assist in raising up to \$80 million in public financing for the multiple construction projects. Prior to the selection of Ice Miller, Thompson advised Bose McKinney that he was not going to recommend that the Board use its regular school attorney for the bond work.

ANSWER: Thompson admits only that Ice Miller was utilized by plaintiff as its counsel. The Board participated in interviews for bond counsel and the Board specifically stated that it did not desire to use Bose McKinney & Evans as bond counsel. Various other persons

participated in the interviews. Thompson denies all other material allegations contained in paragraph 40 of plaintiff's Complaint.

41. By law, the Board was required to meet and approve the District's business during public board meetings. Thompson and his staff prepared the agendas for each board meeting along with all materials and information necessary to make decisions on behalf of the District.

ANSWER: Thompson admits the material allegations in paragraph 41, but denies any implication that the Board was limited in its ability to prepare in advance of meetings, including during the course of executive sessions, and is otherwise without sufficient information to admit or deny the material allegations in paragraph 41 as phrased and therefore denies the remaining material allegations contained in paragraph 41 of plaintiff's Complaint.

42. Because of the overwhelming amount of work and detail involved in the District's business, the Board appropriately relied upon Thompson to identify and explain the important provisions of the various contracts, agreements, proposals, and other documents to the Board.

ANSWER: Thompson admits only that the Board appropriately relied upon him as to a variety of contract, agreement, proposal and other documentary matters. Thompson denies that the Board relied upon or should have relied upon him to detail provisions of negotiated contracts between the Board and Thompson, as to which Thompson and the Board were legally adverse and the Board had its own counsel.

43. Thompson was well aware that the Board trusted him and relied upon his recommendations and advice. Moreover, Thompson was also aware that the Board relied upon him to provide the Board with the necessary information and facts for the Board to make an informed decision in the best interests of the District on all matters.

ANSWER: Upon information and belief, Thompson admits the material allegations in paragraph 43 with the exception of reliance in connection with the negotiation of contracts between Thompson and the Board, as to which the Board had legal counsel and was legally advised and had its own duties of diligence. Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 43 of plaintiff's Complaint.

44. Thompson repeatedly assured the Board that he was fulfilling his duties to keep the Board fully informed as to all aspects of the District's business and activities. Thompson's constant mantra to the Board was that there were to be "no surprises." No surprises meant that he was providing the Board with all information it required to operate the District.

ANSWER: Thompson admits the material allegations in paragraph 44, but adopts his answer contained in paragraph 43 as his denial to paragraph 44 as it relates to his contract with the Board.

45. Thompson also knew that the Board would, at Thompson's recommendation, execute a contract without reading all its terms, relying upon Thompson to describe and truthfully explain the salient provisions of a contract.

ANSWER: Thompson denies that he ever encouraged the Board to not read the contracts or that the Board relied on him to explain contract terms of his own contract. Based upon the lack of any specifics of the allegations contained in paragraph 45 Thompson specifically denies that allegation or the inferences contained in paragraph 45 and incorporates his previous answer in paragraphs 43 and 44.

3. Thompson's 1998, 2000, 2002 and 2003 Contracts

46. Throughout this intense building period in the District's history, the Board and Thompson regularly reviewed, approved, and modified salary schedules and compensation that applied to over 2,000 District employees.

ANSWER: Thompson admits the allegations contained in paragraph 46 of plaintiff's Complaint.

47. The Board also considered requests from Thompson to make what were described by Thompson as relatively minor modifications to his contract. Indeed, the Board approved contracts with what were relatively minor modifications in 1998, 2000, 2002 and 2003.

ANSWER: Thompson admits that the Board approved contracts and denies all other material allegations contained in paragraph 47 of plaintiff's Complaint including defining modification in the Superintendent contract as "relatively minor".

48. The process followed in each modification to the contract was consistent. Thompson would verbally request that the Board consider a modification to his contract. Based upon Thompson's verbal explanation, the Board would agree to accept or reject his proposed changes.

ANSWER: Thompson denies the material allegations contained in paragraph 48 of plaintiff's Complaint.

49. Thereafter, Thompson would advise attorneys at Ice Miller and Bose McKinney of the changes he claimed the Board had approved. The attorneys then revised the contract accordingly based upon Thompson's instructions.

ANSWER: Thompson denies the material allegations contained in paragraph 49 of plaintiff's Complaint.

50. Thompson would subsequently present the revised contract to the Board during a regularly scheduled public board meeting for signatures representing that the new contract contained only the changes they had previously discussed and approved.

ANSWER: Thompson denies the material allegations contained in paragraph 50 of plaintiff's Complaint.

51. This procedure was followed in connection with Thompson's 2003 contract. Following a discussion with the Board, Thompson advised attorneys of the changes to his contract. The attorneys re-drafted a new contract.

ANSWER: Thompson denies the material allegations contained in paragraph 51 of plaintiff's Complaint.

52. Thompson's compensation in his 2003 contract as compared with the compensation provided for in his 1996 contract remained generous:

- a. His annual salary for the 2003-2004 school year increased to \$163,105 which represented an annual 7.8% salary increase;
- b. His working days decreased three days;
- c. His monthly automobile allowance increased from \$600 to \$975 per month;
- d. He continued to receive insurance for a \$1 annual premium along with \$500 for an annual examination and payments to his retirement plans including TRF and his 403(b) plan; and,
- e. New retirement plans allowed under sections 401 (a) and 457 of the Internal Revenue Code were included.

ANSWER: Thompson denies that the allegations contained in paragraph 52 of plaintiff's Complaint completely and accurately describes his 2003 contract, the terms and provisions of which speak for themselves. Thompson also denies the allegations that the compensation "remained generous".

53. Other additional changes made to his contract between the period 1996 through 2003 benefiting Thompson included payments for days worked in excess of the working days, compensation for unused sick days, and reimbursement for expenses.

ANSWER: Thompson admits only that various changes to contracts between 1996 and 2003 were made and that the terms and provisions of each contract speak for themselves. Thompson denies all other material allegations contained in paragraph 53 of plaintiff's Complaint.

54. For example, all five contracts between 1996 through 2003 allowed the accrual of 9 sick days per year, with a lifetime cap of 235 days (a two-day variance from the 1996 cap). However, consistent with benefits provided to other administrators in the District, the Board modified the contract to allow Thompson to receive \$57 per day up to a total cap of 235 days. Thus, the maximum potential payment would be \$13,395 if Thompson had accumulated the maximum 235 days.

ANSWER: Upon information and belief, Thompson admits the material allegations contained in paragraph 54 of plaintiff's Complaint as to the terms of the various contracts; however, the terms and provisions of the contracts speak for themselves.

55. After the first contract, the parties also agreed upon a simple formula to compensate Thompson for any days he might be required to work over the total number of contracted working days. Thus, by 2003, if Thompson worked any days over 224 days, he would be paid a per diem rate for each day worked. The per diem rate equaled his annual base salary divided by the number of working days. Thus, if Thompson worked 225 days (one day over his required working days), he would receive a per diem rate of \$728 (\$163,105 divided by 224 working days which would equal \$728.)

ANSWER: Thompson admits that the 2003 contract provided for a per diem rate to be paid for any days worked in excess of 224 days. Thompson neither admits or denies the remaining material allegations contained in paragraph 55 of plaintiff's Complaint, as the terms and provisions of the contract speak for themselves.

56. On July 7, 2003, the Board approved Thompsons's 2003 contract at a public board meeting.

ANSWER: Thompson admits the material allegations contained in paragraph 56 of plaintiff's Complaint and notes that the Board and its counsel executed the contract.

4. The 2004 Contract

57. Aware that the Board reposed great trust and confidence in Thompson with regard to his employment contracts and compensation, Thompson engaged in a fraudulent scheme to obtain more compensation than he knew the Board would agree to when negotiating his contracts with the Board in 2004, 2005 and 2007.

ANSWER: Thompson denies the material allegations contained in paragraph 57 of plaintiff's Complaint.

58. Although he was already highly compensated relative to other Indiana superintendents, beginning in 2004, Thompson began to take multiple, complex steps to increase his total compensation package without providing the Board with complete and accurate information.

ANSWER: Thompson denies the material allegations contained in paragraph 58 of plaintiff's Complaint.

59. First, unbeknownst to the Board, Thompson began utilizing his personal attorneys at Ice Miller, not the District's school attorneys at Bose McKinney, to perform legal services relating to employee benefit plans. Thus, besides representing Thompson personally, Ice Miller

also became attorneys representing the District. In early 2004, Ice Miller was invoicing the District for, among other things, the drafting of the District's master contract for certain IRS approved benefit plans for teachers and administrators.

ANSWER: Thompson denies the material allegations contained in paragraph 59 of plaintiff's Complaint.

60. In 2004, Thompson approached the Board and advised that he was beginning to think about retirement and the Board should take steps to prepare for his successor.

ANSWER: Thompson admits that on an unknown date, perhaps during 2004, he advised the Board that he was beginning to contemplate retirement. Thompson is without sufficient information to admit or deny all other material allegations contained in paragraph 60 of plaintiff's Complaint and therefore denies the allegations.

61. Thompson suggested that a "Superintendent Emeritus" position be created. Thompson explained to the Board that the purpose of the Superintendent Emeritus position was to give the Board the option of using Thompson's services in a consulting position to help a new superintendent to become familiar with the District, its substantial business and educational operations and the Board, particularly if the new superintendent was hired from outside the District. Thompson explained to the Board that the Board would have the discretion to decide if the District needed Thompson's services after his retirement and, if so, for how long.

ANSWER: Thompson denies the material allegations contained in paragraph 61 of plaintiff's Complaint.

62. After receiving verbal approval from the Board that a Superintendent Emeritus position could be created to possibly aid a new superintendent's transition, Thompson instructed Ice Miller to prepare a new contract. Ice Miller drafted language in the contract that the District

"shall employ" Thompson in this position following his retirement, which was inconsistent with Thompson's direct representations to the Board.

ANSWER: Thompson denies the material allegations contained in paragraph 62 of plaintiff's Complaint.

63. In May 2004, Ice Miller attorneys and Bailey exchanged emails and drafted contract revisions based upon Thompson's instructions. At this time Ice Miller represented Thompson personally and the District.

ANSWER: Thompson admits only that Ice Miller attorneys and the Board's attorneys worked together to draft various revisions to the contract to which the Board had previously agreed. Thompson further admits that Bose McKinney's Bailey was the Board's counsel throughout these negotiations. Thompson denies all other material allegations contained in paragraph 63 of plaintiff's Complaint.

64. On June 7, the Board first approved the compensation for multiple classes of District employees. Thereafter, the Board considered Thompson's 2004 contract effective July 1, 2004 through June 30, 2010. Based upon Thompson's false representations to the Board that the contract was similar to his prior contracts with the only modification of adding the discretionary Superintendent Emeritus position, the Board approved his contract.

ANSWER: Thompson denies the material allegations contained in paragraph 64 of plaintiff's Complaint.

65. Contrary to Thompson's assertions, the revised contract included substantial changes. A new provision was inserted in the contract entitled "Transition to Retirement and Assistant to Successor as Superintendent" that provided Thompson with three new benefits. First, it provided for a lump sum severance payment to be made at his retirement that was equal

to 60% of his Medicare wages and tips from his last W-2 statement. Second, he was to receive a payment of \$10,000 and 20 hours of professional services for retirement planning. Thompson never discussed these changes with the Board.

ANSWER: Thompson admits only that various changes to the contract were negotiated and that the terms and provisions of the contract speak for themselves. Thompson denies all other material allegations contained in paragraph 65 of plaintiff's Complaint.

66. Third, it created the new Superintendent Emeritus position whereby Thompson would continue employment for 125 days with the same salary and benefits in effect at the time following his retirement. Although the Board had approved the position in concept, it had not approved it as a mandatory position with specific compensation or for a specific number of days – but only for a possible temporary position at the Board's discretion, if needed.

ANSWER: Thompson admits only that various changes to the contract were negotiated and that the terms and provisions of the contract speak for themselves. Thompson denies all other material allegations contained in paragraph 66 of plaintiff's Complaint.

67. Thompson did not ask attorneys at either Ice Miller or Bose McKinney to explain the changes in the contract or their significance to the Board.

ANSWER: Thompson admits that he spoke with his counsel and admits, upon information and belief, that the Board spoke with its counsel during the course of contract negotiations. Thompson admits that he did not instruct his counsel and that he was in no position to instruct the Board's counsel to communicate with the Board regarding contract negotiations or the contract which eventually resulted therefrom. Thompson denies all other material allegations contained in paragraph 67 of plaintiff's Complaint.

5. The 2005 Contract

68. In late May or early June 2005, Thompson requested that the Board consider a small increase in his base salary.

ANSWER: Thompson denies the material allegations contained in paragraph 68 of plaintiff's Complaint.

69. Contrary to his explanations to the Board, Thompson communicated to his attorneys at Ice Miller that the Board had approved significant changes which would result in substantial costs to the District. These changes were major and completely contrary to all prior contracts.

ANSWER: Thompson denies the material allegations contained in paragraph 69 of plaintiff's Complaint.

70. On June 8, 2005 Tara Sciscoe ("Sciscoe"), one of Thompson's Ice Miller attorneys, emailed Bailey and copying Thompson stating: "at Dr. Thompson's request I have attached a draft superintendent's contract of employment for Dr. Thompson that was approved by the Board at its June 7 meeting for your legal review." Thompson then falsely replied to Sciscoe and Bailey by advising that the Board approved the modifications contained in the draft contract at the June 6th working session and would approve the contract at the June 20th board meeting.

ANSWER: Thompson denies the material allegations contained in paragraph 70 of plaintiff's Complaint.

71. On June 20, 2005, the Board held a regular board meeting where it conducted a substantial amount of business. Part of the meeting involved the approval of Personnel Schedules, the 2005-2006 Benefit Schedules for Custodians/Grounds/Operations Personnel/Maintenance/Mechanics/and Bus Drivers followed by the approval of the 2005-06

Administrative/Management Benefits, Cabinet Retention Plan, and finally, the Superintendent's Contract.

ANSWER: Upon information and belief, Thompson admits the material allegations in paragraph 71 except that the agenda and minutes of a regular board meeting would reflect a meeting's context and content and speak for themselves. Thompson denies the other material allegations contained in paragraph 71 of plaintiff's Complaint.

72. Based upon Thompson's recommendation to approve his contract which purportedly contained only minor revisions, the Board approved the contract.

ANSWER: Thompson admits the Board approved his contract in 2005 and denies all other material allegations contained in paragraph 72 of plaintiff's Complaint.

73. Contrary to Thompson's assertions, the 2005 contract contained five major changes that had a significant financial impact on the District and significantly increased Thompson's compensation, none of which had been disclosed to the Board by Thompson.

ANSWER: Thompson denies the material allegations contained in paragraph 73 of plaintiff's Complaint.

74. First, Thompson removed the cap on sick day accumulation. From 1996 through 2004 (six different contracts covering a 9-year period), Thompson, like all other administrators, could accumulate up to 235 sick days. In 2005, the cap on sick day compensation was removed from Thompson's contract. This significant change was not set forth in the portion of the contract titled "Sick Leave." Thompson did not inform the Board of this significant change, nor did he direct the Board's attention to new language in the section "Benefits Provided to All Administrators." Section 4(b) of the 2005 contract entitled "Sick Leave" expressly stated that the

cap on accumulated sick days remained in place. However, new language was inserted in a different section removing the cap on accumulated sick days.

ANSWER: Thompson denies that he removed anything. In fact, a contract which addressed sick days as part of the agreement was drafted by the Board's counsel and approved by the Board. Thompson neither admits nor denies all other material allegations contained in paragraph 74 of plaintiff's Complaint, as the terms and provisions of the contract speak for themselves.

75. Second, the contract changed the manner in which sick days were compensated. Rather than receiving \$57 per day as all other administrators received, Thompson now received 50% of his per diem rate per sick day. Thus, based upon his 2005 compensation, instead of receiving \$57 per sick day, Thompson would receive \$413 per sick day, which was seven times greater than any other administrator. The contract also provided that the sick leave pay would increase in the following years.

ANSWER: Thompson neither admits nor denies the material allegations contained in paragraph 75 of plaintiff's Complaint as the terms and provisions of the 2005 contract speak for themselves.

76. Third, Thompson also increased his severance payment in 2005 from 60% of his last W-2 statement to 100%.

ANSWER: Thompson admits only that the 2005 contract modified the contract's severance pay provision. The terms and provisions of the 2005 contract speak for themselves. Thompson denies all other material allegations contained in paragraph 76 of plaintiff's Complaint.

77. Fourth, another term was added to his severance compensation. Thompson was to receive an amount equal to his maximum elective deferrals to his 403(b) and 457(b) plans. This addition would cost the district \$36,000. In addition, the contract increased his payment for retirement planning from \$10,000 to \$15,000.

ANSWER: Thompson neither admits nor denies the material allegations contained in paragraph 77 of plaintiff's Complaint. The terms and provisions of 2005 contract speak for themselves.

78. Fifth, the contract inserted another unconscionable provision requiring that the District make post-employee contributions to the maximum extent provided under Section 403(b) over a 5-year period following his retirement. This change alone, unbeknownst to the Board, would cost the District to expend over \$240,000 over a five-year period following retirement even though Thompson would no longer be providing any services whatsoever to the District. This significant, avaricious change was never discussed with or explained to the Board.

ANSWER: Thompson denies the material allegations contained in paragraph 78 of plaintiff's Complaint.

79. Thompson never requested that attorneys with Ice Miller or Bose McKinney meet with or explain the significant changes and associated costs to the Board.

ANSWER: Thompson admits only that he never instructed his counsel and that it would have been inappropriate for him to instruct the Board's counsel to discuss ongoing contract negotiations. Thompson presumes that the Board discussed the negotiations, the terms and provisions of the contract and that counsel was at all times available to discuss such matters with the Board.

6. The Retention Bonus

80. At the same Board meeting where Thompson's 2005 contract was approved, besides his own contract, Thompson placed on the Board's agenda the review of a "Cabinet Retention Bonus" proposal. According to Thompson, he wanted to ensure that certain key members of his senior staff who were retirement eligible be encouraged to remain with the District.

ANSWER: Upon information and belief, Thompson admits the material allegations contained in paragraph 80 of plaintiff's Complaint.

81. The Board, based upon Thompson's recommendation, approved a \$15,000 bonus to be paid to a limited number of key employees working for Thompson.

ANSWER: Upon information and belief, Thompson admits that the Board approved a \$15,000.00 bonus to be paid to a limited number of key employees working with Thompson and that Thompson supported the proposal, however, Thompson denies an inference that the Board did not have independent judgment so Thompson denies the remainder of material allegations contained in paragraph 81 of plaintiff's Complaint.

82. Unbeknownst to the Board, Thompson then instructed his subordinates to pay him the retention bonus as well. Thompson received that bonus for at least six years thereafter, well knowing that the Board never approved his receipt of a retention bonus.

ANSWER: Thompson denies the material allegations contained in paragraph 82 of plaintiff's Complaint.

83. Also, unbeknownst to the Board, Thompson provided the retention plan to Ice Miller, not Bose McKinney, for its legal review.

ANSWER: Thompson denies the material allegations contained in paragraph 83 of plaintiff's Complaint.

7. The 2007 Contract

84. Despite the fact that the 2005 contract contained a provision stating that the contract shall not be revisited through June 30, 2010, Thompson returned to the Board in the summer of 2007 requesting some purported minor modifications to his 2005 contract.

ANSWER: Thompson denies the material allegations contained in paragraph 84 of plaintiff's Complaint.

85. Thompson presented the need for a new contract by stating he wanted more vacation time, a raise to his annual salary, and compensation for his management of the Emergency Services Educational Corporation ("ESEC"). The Board orally agreed to some increase in vacation time (a decrease in working days) and a modest raise to his annual salary. The Board did not agree to his request for compensation for ESEC Management.

ANSWER: Thompson admits only that the Board approved a new 2007 contract but denies the remaining material allegations contained in paragraph 85 of plaintiff's Complaint.

86. Thompson then contacted Ice Miller (attorneys now for both Thompson and the District) and instructed them to draft the changes in a new contract which he falsely claimed had been approved by the Board.

ANSWER: Thompson denies the material allegations contained in paragraph 86 of plaintiff's Complaint.

87. The draft contracts exchanged between Thompson, his attorney Ice Miller including Sciscoe, and Bailey contained multiple provisions never discussed with or authorized by the Board. In fact, the draft contract included changes that had been specifically rejected by the Board.

ANSWER: Thompson denies the material allegations in contained paragraph 87 of plaintiff's Complaint.

88. First, in 2007, Thompson caused the number of working days to decrease from 220 to 210. This reduction in the number of days was over two times larger than any previous one-time reduction had been. The reduction of the number of working days had two effects. First, it created a larger per diem rate by decreasing the value of the denominator in the per diem formula. Second, it allowed Thompson to receive his per diem rate for any days worked in excess of 210 days. In 2010, Thompson worked 36.5 days in excess of 210 working days, which resulted in \$99,335.12 in additional compensation.

ANSWER: Thompson admits that the 2007 contract reduced the number of working days, which obviously affected the per diem. The terms and provisions of the 2007 contract speak for themselves. Thompson is without sufficient information at present to admit or deny all other material allegations contained in paragraph 88 of plaintiff's Complaint and for that reason must deny the material allegations contained in paragraph 88.

89. Second, over the specific Board objections, Thompson included a new provision in the 2007 contract entitled "Additional Responsibilities" that provided him with an ongoing payment of \$1,000 per month for several years for the management of the Emergency Service Educational Corporation. This provision was specifically rejected by the Board. By fraudulently inserting the provision in the contract, Thompson received in excess of \$48,000.

ANSWER: Thompson denies the material allegations contained in paragraph 89 of plaintiff's Complaint.

90. Third, Thompson increased the amount of his annual physical compensation from \$500 to \$2,500. This provision resulted in Thompson receiving more than \$8,000 in compensation that Thompson never discussed with the Board and despite the fact that he had free health insurance.

ANSWER: Thompson denies the material allegations contained in paragraph 90 of plaintiff's Complaint.

91. Fourth, Thompson drastically changed the way his per diem rate was calculated. Previously, per diem rates were calculated by dividing his annual base salary by the number of working days. The new provision required that all compensation (annual base salary, 403(b), 401(a) and 457 employer and employee contributions, auto allowance payments, annual health examination allowance, business and professional activity allowance, general reimbursement allowance, technology allowance and ESEC compensation) be divided by the number of working days. This per diem rate was applied to sick days and the number of days he worked in excess of his contract days. Thompson never discussed this change with the Board or explained the exorbitant financial impact which would result from this unusual and elaborate formula.

ANSWER: Thompson denies the material allegations contained in paragraph 91 of plaintiff's Complaint and states that the terms and provisions of the 2007 contract speak for themselves.

92. Fifth, Thompson again changed how he was compensated for sick days. Thompson now received 100% of his per diem rate for each sick day. By the time he retired, that equaled over \$2,700 per sick day, an amount 47 times greater than what every other administrator earned. Thompson never discussed this change with the Board or its financial significance.

ANSWER: Thompson denies the material allegations contained in paragraph 92 of plaintiff's Complaint and states that the terms and provisions of the 2007 contract speak for themselves.

93. Sixth, Thompson increased the number of days for his term as Superintendent Emeritus from 125 days to 150 days. The additional 25 days would cost the District in excess of \$44,000. Thompson never discussed this change with the Board or explained its significance.

ANSWER: Thompson denies the material allegations contained in paragraph 93 of plaintiff's Complaint and states that the terms and provisions of the 2007 contract speak for themselves.

94. On July 9, 2007 the Board conducted both its annual organization meeting and regular meeting during which it conducted substantial amounts of school business. The Board then reviewed and approved the Personnel Schedules. At that time, Thompson then recommended that the Board approve the Superintendent's Salary and Benefits schedule.

ANSWER: Thompson admits that a meeting occurred on July 9, 2007 and admits that the 2007 contract was ultimately approved, but is without sufficient information to admit or deny all other material allegations in paragraph 94 and therefore denies the remainder of material allegations contained in paragraph 94 of plaintiff's Complaint.

95. During the July 9, 2007 public board meeting, Thompson referring to himself in the third person, told the Board: "Mr. President, Members of the Board, Umm...taking your recommendations to provide the superintendent a 4% increase as we did other personnel as well as some other modifications to his contract. We've worked with Mr. Bailey and he's inserted that into the legal language in the superintendent's contract and we present it tonight for your approval."

ANSWER: Thompson denies the material allegations contained in paragraph 95 of plaintiff's Complaint.

96. Rather than the mere "4%" raise that Thompson referred to, Thompson made six major and costly changes to his contract that significantly increased his compensation over \$1 million.

ANSWER: Thompson denies the material allegations contained in paragraph 96 of plaintiff's Complaint.

97. At the July 9, 2007 public board meeting, Thompson deliberately misled the Board and the public concerning the value of his contract.

ANSWER: Thompson denies the material allegations contained in paragraph 97 of plaintiff's Complaint.

98. Thompson never requested any attorneys from Ice Miller or Bose McKinney explain the significant changes made to his contract to the Board.

ANSWER: Thompson admits only that he did not instruct his attorneys to meet with the board to discuss terms and provisions of the contract which they had negotiated with the Board's counsel. Thompson denies all other material allegations contained in paragraph 98 of plaintiff's Complaint.

8. The Concealment of the Total Compensation from the Board and the Public

99. Thompson took multiple steps to maintain the secrecy of his total compensation.

ANSWER: Thompson denies the material allegations contained in paragraph 99 of plaintiff's Complaint.

100. Thompson instructed senior staff against directly communicating with any Board member without his express approval. Thompson exercised an authoritarian management style and did not tolerate disobedience or questioning of his authority and decisions.

ANSWER: Thompson denies the material allegations contained in paragraph 100 of plaintiff's Complaint.

101. Thompson instructed a subordinate to never provide his contract to anyone without his prior approval. The subordinate maintained the District's only copy of Thompson's contracts under lock and key. The District's Chief Personnel Officer and Chief Financial Officer, two individuals who should have received these contracts, did not have copies.

ANSWER: Thompson denies the material allegations contained in paragraph 101 of plaintiff's Complaint.

102. Thompson made it known to the District's administrative staff that his compensation was a private matter and that all inquiries regarding his pay and benefits were to go through him.

ANSWER: Thompson denies the material allegations contained in paragraph 102 of plaintiff's Complaint.

103. Thompson was keenly aware of how his compensation was to be computed and kept track of all payments and distributions in charts and memoranda which he never provided to the Board.

ANSWER: Thompson admits that he understood the terms of his contract and believed that the Board also knew and should have known the terms of the contract. He also admits that he provided to the Board anything it requested but assumed their attorney would provide information to his client, the Board. Thompson denies the remainder of material allegations contained in paragraph 103 of plaintiff's Complaint.

104. At Board meetings where his contract was to be approved, Thompson would, for the first time, present the actual written contract to the Board for signatures. After obtaining the necessary Board signatures, he would collect the originals and all copies of the Contract.

ANSWER: Thompson denies the material allegations contained in paragraph 104 of plaintiff's Complaint.

105. On December 21, 2007, Ice Miller attorneys prepared a "Personal and Confidential" memorandum to Thompson's subordinate financial officer regarding "Dr. Terry Thompson – TRF Analysis," providing a detailed analysis and instructive charts explaining Dr. Thompson's compensation. Although the District, not Thompson, paid for Ice Miller's analysis, the memo was given to Thompson and his subordinate only, not the Board. Ice Miller also never provided this memorandum to Bose McKinney. The subordinate understood that this document was not to be provided to the Board based upon Thompson's actions and the memo having a heading of "**PERSONAL & CONFIDENTIAL.**"

ANSWER: Thompson admits that a memorandum was prepared but is without sufficient information to admit or deny all other material allegations contained in paragraph 105 of plaintiff's Complaint.

106. At Board meetings, Thompson took steps to ensure that information provided to the Board was done so in a controlled manner. Thompson would often arrange the seating and would assign a subordinate to sit next to each board member so he knew what they were discussing and could limit communication between the Board members.

ANSWER: Thompson denies the material allegations contained in paragraph 106 of plaintiff's Complaint.

107. In the fall of 2009, the Indianapolis Star requested Thompson's salary and a copy of his current contract. Thompson directed two members of his cabinet to handle the request. The two individuals never had access to Thompson's contract so they asked Thompson for the information. Thompson advised them that his 2004 contract was the current contract. Thus, they

produced a copy of his 2004 contract to the Indianapolis Star along with fraudulent salary information of \$194,989 with \$13,691 in expenses. Thompson's 2009 W-2 reports income of \$541,818.79 in Medicare wages and tips. Thus, Thompson drastically underreported his salary and concealed the multiple significant and costly changes contained in his 2005 and 2007 contracts.

ANSWER: Thompson admits, upon information and belief, that a contract other than the 2007 contract was produced to the Indianapolis Star, denies that any "fraudulent salary information" was produced, denies underreporting or concealing anything and is otherwise without sufficient information to admit or deny the material allegations in paragraph 107.

108. On January 5, 2010, Ice Miller attorney Sciscoe provided Thompson's subordinate financial officer with a memorandum explaining Thompson's sick leave compensation in anticipation of his vesting within the next month. The single-spaced, five-page memo provided a detailed analysis of how Thompson's retirement benefits were to be calculated. The memo was marked in bold: "**CONFIDENTIAL AND ATTORNEY CLIENT PRIVILEGED.**" Again, even though the District paid Ice Miller's legal fees to draft the memo, the memo was only shared with Thompson and his subordinate, not the Board or any other District employee. Significantly, Ice Miller did not forward the memorandum to Bailey or any other attorney at Bose McKinney either. The subordinate again understood that this document was not to be shared with anyone.

ANSWER: Thompson admits that a memorandum was prepared and admits that the District was given the memorandum. Thompson also admits that, upon information and belief, this memorandum was not delivered to Bailey, but Bailey would have already had such information. Thompson is otherwise without sufficient information to admit or deny the material

allegations contained in paragraph 108 and therefore denies the remainder of the allegations contained in paragraph 108 of plaintiff's Complaint.

9. The Payment of Sick Leave

109. On January 26, 2010, Thompson wrote a public letter which was widely disseminated within the District discussing the fiscal challenges facing the District. According to Thompson, in 2007 the District under his leadership began to address the likely deficiency in revenues and thereafter began reducing the District's workforce by 94 positions and reducing expenditures by \$4.1 million. Thompson advised that State funding for K-12 Public Schools would be cut, resulting in a loss of \$4.5 million to the District's General Fund. Thompson assured the community that the mission of the District was to retain and provide highly qualified teachers in the classrooms who will provide the best possible education to the students. "Every effort has been made to make decisions that have the least possible impact on the classroom."

ANSWER: To the extent that the letter speaks for itself, Thompson admits the remaining material allegations contained in paragraph 109 of plaintiff's Complaint.

110. In his letter, Thompson did not advise that he had shown no such restraint with his own compensation. He did not advise the District or the community that since 2007 he had caused an unconscionable, multi-million dollar contract to be awarded to himself which would further cripple the District's budget.

ANSWER: Thompson denies the material allegations contained in paragraph 110 of plaintiff's Complaint.

111. Unbeknownst to the Board, just one week later following his letter discussing the reduction in benefits to others, on February 2, 2010, Thompson instructed his subordinates to cause a payment to him of \$855,784 representing his uncapped sick days paid out at the new per diem rate. The enormity of this payment is shocking – particularly as compared to the original

compensation formula in his contracts which remained applicable to other administrators of a potential maximum of 235 accumulated sick leave days times \$57 per day, or a total of \$13,395.

ANSWER: Thompson denies the material allegations contained in paragraph 111 of plaintiff's Complaint.

112. Thompson never provided the Board with any of the complicated multi-page charts and schedules created by attorneys to advise his subordinate the method of calculating Thompson's sick day payment.

ANSWER: Thompson denies that the Board was deprived of relevant information or of access to the terms and provisions of the contract at issue and is otherwise without sufficient information to admit or deny the material allegations in paragraph 112 and therefore denies the remainder of the material allegations contained in paragraph 112 of plaintiff's Complaint.

10. Early Retirement Incentive

113. On July 12, 2010, the Board held its annual meeting to discuss various educational and budget matters. One of the items placed on the agenda by Thompson was an early retirement incentive program. The early retirement incentive presentation made to the Board was explained by Thompson as a method of saving money by encouraging older, more highly paid teachers to retire early in exchange for a one-time \$35,000 bonus and replace them with younger, lower paid teachers. All drafts of the early retirement incentive agreement provided to the Board prior to the final approval of the program specifically excluded the Superintendent. The Board was also made aware that the teacher's union approved the early retirement incentive with the understanding that it expressly excluded the Superintendent.

ANSWER: Thompson admits the material allegations contained in paragraph 113 and admits that the Board knew that a superintendent, as an administrator, was entitled to all benefits

provided to senior administrators. Thompson denies any remaining allegations contained in paragraph 113 of plaintiff's Complaint.

114. On August 2, 2010, the Board conducted a regular board meeting where one of the items on the agenda was the approval of the early retirement incentive agreement. Immediately before the Board's vote on the early retirement incentive, Thompson instructed a subordinate to remove the language excluding the Superintendent from the final document authorizing the retirement incentive program. Thompson never advised the Board that he had caused such a material and unauthorized change to the early retirement policy prior to the vote at the public meeting.

ANSWER: Thompson denies the material allegations contained in paragraph 114 of plaintiff's Complaint.

115. Thompson also never advised the Board that Ice Miller was reviewing the early retirement policy, not Bose McKinney.

ANSWER: Thompson denies the material allegations contained in paragraph 115 of plaintiff's Complaint.

116. On August 4, 2010, Thompson wrote another "Updated Budget Letter" widely disseminated throughout the District, where he stated that: "The fiscal challenges for public schools in Indiana continue to mount. Since 2007, the MSD of Wayne Township has been analyzing how these challenges affect our district, and we have been adjusting our budget accordingly. Throughout this process, our primary goal has been and continues to be doing everything we can to prevent budgetary cuts from negatively impacting the education of our students." Thompson advised that the District had made cuts in expenditures of \$8.4 million since 2007 – but that had not been enough. New budget reductions would require including the

elimination of After-School Academic Interventions, further reductions in employee positions and reductions in extra-curricular activities. Thompson predicted additional budget cuts but assured his constituents that "We are committed to doing everything we can to avoid this, and are asking for your understanding and support as we continue to provide the very best education for our students during difficult financial times." Thompson again failed in his duty to advise the District of his multi-million dollar contract and its effect on the budget.

ANSWER: Thompson admits that he prepared an "Updated Budget Letter" and that the budget letter, the terms of which speak for themselves, was disseminated. Thompson denies all other material allegations contained in paragraph 116 of plaintiff's Complaint.

117. In August, 2010, Thompson advised the Board of his intention to retire in December, 2010.

ANSWER: Thompson admits the material allegations contained in paragraph 117 of plaintiff's Complaint.

118. In September, 2010, the Board began the process of hiring a new superintendent.

ANSWER: Thompson admits the material allegations contained in paragraph 118 of plaintiff's Complaint.

119. Dr. Jeffery Butts ("Butts"), the District's Assistant Superintendent, was selected.

ANSWER: Thompson admits the material allegations contained in paragraph 119 of plaintiff's Complaint.

120. On October 4, 2010, the Board approved the appointment of Butts as Superintendent of Schools.

ANSWER: Thompson admits the material allegations contained in paragraph 120 of plaintiff's Complaint.

121. On or about November 1, 2010, a Board member was surprised to learn that Thompson had included himself on the list to receive the \$35,000 early retirement benefit.

ANSWER: Thompson denies that any board member should have been surprised and is otherwise without sufficient information to admit or deny the allegations in paragraph 121 and therefore denies the remainder of the allegations contained in paragraph 121 of plaintiff's Complaint.

122. On November 3, 2010, a Board member questioned Thompson's inappropriate receipt of the \$35,000 retirement incentive. In response, Thompson berated and instructed the Board member that: (a) "You need to talk to me directly, not to other school board members"; (b) "I control Wayne Township, and the Board does what I say. You need to keep your mouth shut"; (c) "You wouldn't be on this school board unless I allowed it. Now I wish I had admonished you"; (d) "I don't need the stinking \$35,000; you can keep your money. Does that make you happy?"; and, (e) "I am going to sue the Board for slander and my attorney is Ice Miller. Jon [Bailey] is your attorney."

ANSWER: Thompson denies the material allegations contained in paragraph 122 of plaintiff's Complaint.

123. On or about January 3, 2011, Thompson instructed his subordinates to pay and he received the \$35,000 early retirement incentive even though he had already had a contract providing for substantial and, in fact, exorbitant retirement benefits and the Board expressly disapproved of his entitlement to the payment.

ANSWER: Thompson denies the material allegations contained in paragraph 123 of plaintiff's Complaint.

124. On December 28, 2010, Thompson received \$702,737.72 in severance.

ANSWER: Thompson admits only that during December of 2010 he received severance compensation as provided in his contract approved and signed by the Board and the Board's attorney, otherwise Thompson is without sufficient information at present to admit or deny all other material allegations contained in paragraph 124 of plaintiff's Complaint.

125. Besides his receipt of a \$15,000 retention bonus payment in July, 2010, on January 3, 2011, Thompson received a \$35,000 retirement incentive payment.

ANSWER: Thompson is without sufficient information to admit or deny the material allegations in paragraph 125. Thompson thereby denies the remaining allegations contained in paragraph 125 of plaintiff's Complaint.

126. In early 2011, the media again requested Thompson's salary and contract information. Thompson falsely confirmed to the new superintendent that his 2004 contract was the correct and current contract. Upon later learning of the 2007 contract, the new Superintendent contacted the media and provided the correct version.

ANSWER: Thompson denies the material allegations contained in paragraph 126 of plaintiff's Complaint.

127. On or around January 31, 2011, the Board requested Bailey to contact Thompson to advise him that the Board wanted to terminate the Superintendent Emeritus position. Thompson advised Bailey that he intended to resign and then asked if the Board was considering criminal charges.

ANSWER: Thompson denies the material allegations contained in paragraph 127 of plaintiff's Complaint.

D. Compensation to Thompson and the Attorneys

128. From 1996 through 2011, Thompson received both authorized and unauthorized compensation from the District totaling over \$6 million in gross salary, free health insurance, and

many other perks. In addition, he received several lucrative retirement benefits from the District, including over \$1 million in 401 (a), 403 (b) and 457 accounts. Thompson also receives an estimated \$200,000 in annual TRF payments.

ANSWER: Thompson denies that at any time he received unauthorized compensation, admits that he has received various benefits provided by contract and is without sufficient information to admit or deny all other material allegations in paragraph 128 and therefore, denies the remainder of the allegations contained in paragraph 128 of plaintiff's Complaint.

129. Despite receiving those substantial funds and while enjoying and receiving great respect and trust from the Board, Thompson never explained the contracts in a manner that the Board, the District's personnel, the public or the media would be able to understand and comprehend. Instead, Thompson, by trust and confidence, lulled Plaintiff into believing his false representations relating to his contracts and compensation.

ANSWER: Thompson denies the material allegations contained in paragraph 129 of plaintiff's Complaint.

130. Additionally, Thompson had the District pay for his Ice Miller personal attorney fees for drafting and negotiating the contracts with District funds. He failed to advise the Board that the District was paying for his attorneys.

ANSWER: Thompson denies the material allegations contained in paragraph 130 of plaintiff's Complaint.

131. From 1997 through 2011, Ice Miller received over \$600,000 in legal fees from the District, including payment for Ice Miller's representation of Thompson in drafting the exorbitant, complicated and elaborate employment contracts and for its representation of the

District in bond offerings, employee benefits, reviews of the retention plan and the early retirement incentives, and other legal work.

ANSWER: Thompson denies the material allegations contained in paragraph 131 of plaintiff's Complaint.

E. The Board's Retention of Independent Counsel

132. In February 2011, the Board retained counsel to conduct an objective and independent investigation of the issues and circumstances relevant to the employment contracts with and compensation claimed by Thompson.

ANSWER: Thompson adopts his answer to the "Introduction" for his answer to the allegations contained in paragraph 132 of plaintiff's Complaint.

133. Following the investigation, the Board for the first time was finally made aware of the truthful terms of Thompson's contracts which had never been appropriately explained to the Board by Thompson.

ANSWER: Thompson denies the material allegations contained in paragraph 133 of plaintiff's Complaint.

Count I

134. The allegations contained in paragraphs 1 through 133 of this complaint are incorporated herein by reference.

ANSWER: Thompson incorporates by reference as if fully set out herein his responses to paragraphs 1 through 133 of plaintiff's Complaint.

135. This is a civil action pursuant to Indiana Code § 34-24-3-1 to recover the pecuniary loss suffered by Plaintiff as a result of Thompson's commission of various criminal acts, which constitute offenses against property pursuant to I.C. § 35-43.

ANSWER: Thompson denies the material allegations contained in paragraph 135 of plaintiff's Complaint.

136. Thompson has committed criminal acts in violation of § 35-43 which has caused pecuniary loss to the Plaintiff, including:

- a. criminal mischief, by knowingly or intentionally causing another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person, in violation of I.C. § 35-43-1-2;
- b. theft, by knowingly or intentionally exerting unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, in violation of I.C. § 35-43-4-2(a);
- c. criminal conversion, by knowingly or intentionally exerting unauthorized control over property of another person, in violation of I.C. § 35-43-4-3;
- d. deception by misapplying entrusted property in a manner that the person knew was unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted, in violation of I.C. § 35-43-5-3(3); and,
- e. fraud, by acting with the intent to defraud and damaging property, in violation of I.C. § 35-43-5-4(9).

ANSWER: Thompson denies the material allegations contained in paragraph 136 including subparts a-e of plaintiff's Complaint.

137. As a direct and proximate result of Thompson's commission of the criminal acts described above, the Plaintiff has suffered pecuniary losses.

ANSWER: Thompson denies the material allegations contained in paragraph 137 of plaintiff's Complaint.

138. Pursuant to I.C. § 34-24-3-1, Plaintiff requests three times its actual damages, costs of this action, attorneys fees, travel expenses, time spent in connection with filing papers, attending court hearings, and otherwise prosecuting this action, and all other reasonable costs of collection and other damages allowed by law.

ANSWER: Thompson denies the material allegations contained in paragraph 138 of plaintiff's Complaint.

Count II

139. The allegations contained in paragraphs 1 through 138 of this complaint are incorporated herein by reference.

ANSWER: Thompson incorporates by reference as if fully set out herein his answers to paragraph 1 through 138 of plaintiff's Complaint.

140. As set forth above, Thompson made false statements of present and existing facts to, and concealed and omitted material facts from the Plaintiff.

ANSWER: Thompson denies the material allegations contained in paragraph 140 of plaintiff's Complaint.

141. Thompson continued to make false statements of fact to, and concealed material facts from, the Plaintiff in order to disguise and conceal the nature of his fraudulent conduct from the Plaintiff.

ANSWER: Thompson denies the material allegations contained in paragraph 141 of plaintiff's Complaint.

142. Thompson failed to reveal the true nature of his employment contracts and compensation, and omitted material facts of which he knew the Plaintiff should be aware.

ANSWER: Thompson denies the material allegations contained in paragraph 142 of plaintiff's Complaint.

143. At the time these material misrepresentations and omissions were made, Thompson knew that they were false or were made with reckless disregard for their truth.

ANSWER: Thompson denies the material allegations contained in paragraph 143 of plaintiff's Complaint.

144. Thompson intended for the Plaintiff to rely on his fraudulent and material misrepresentations and omission and the Plaintiff did, in fact, reasonably rely thereon to its detriment.

ANSWER: Thompson denies the material allegations contained in paragraph 144 of plaintiff's Complaint.

145. As a direct and proximate result of the Thompson's fraudulent and material misrepresentations and omissions, the Plaintiff was injured.

ANSWER: Thompson denies the material allegations contained in paragraph 145 of plaintiff's Complaint.

Count III

146. The allegations contained in paragraphs 1 through 145 of this complaint are incorporated herein by reference.

ANSWER: Thompson incorporates by reference as if fully set out herein his answers to paragraphs 1 through 145 of plaintiff's Complaint.

147. Because of the trust and confidence that Plaintiff reposed in Thompson, and Thompson's superior knowledge of his complicated contracts, Plaintiff relied upon and trusted Thompson. Consequently, Thompson owed a duty to the Plaintiff.

ANSWER: Thompson denies the material allegations contained in paragraph 147 of plaintiff's Complaint.

148. Thompson made false statements to, and concealed and omitted material facts from, the Plaintiff in order to obtain contracts providing for exorbitant compensation which was never knowingly authorized by the Board.

ANSWER: Thompson denies the material allegations contained in paragraph 148 of plaintiff's Complaint.

149. As Plaintiffs' trusted agent and employee, Thompson had a duty to advise plaintiff of the falsity of the statements and to disclose omitted material facts.

ANSWER: Thompson denies the material allegations contained in paragraph 149 of plaintiff's Complaint.

150. Thompson violated the duties owed to Plaintiff by making material misrepresentations of past or existing facts and remaining silent about critical information pertaining to his contract and the compensation he would receive, well knowing that such information would be important.

ANSWER: Thompson denies the material allegations contained in paragraph 150 of plaintiff's Complaint.

151. Plaintiff relied upon Thompson's representations to its detriment.

ANSWER: Thompson denies the material allegations contained in paragraph 151 of plaintiff's Complaint.

152. Plaintiff suffered substantial damages and injury as a proximate cause of its reliance.

ANSWER: Thompson denies the material allegations contained in paragraph 152 of plaintiff's Complaint.

153. Thompson gained an unfair advantage at Plaintiff's expense.

ANSWER: Thompson denies the material allegations contained in paragraph 153 of plaintiff's Complaint.

WHEREFORE, Thompson prays that plaintiff take nothing by its Complaint, for costs of this action and for all other proper relief.

ADDITIONAL DEFENSES

For his additional defenses, Thompson states:

1. Plaintiff is estopped from asserting the various claims of its Complaint.
2. Plaintiff has waived its causes of action.
3. Plaintiff has ratified by its conduct each contract it alleges to be at issue and the terms thereof.
4. Plaintiff's actions are barred by operation of the doctrine of unclean hands.
5. Plaintiff's actions are barred by operations of the doctrine of laches.
6. Certain of Plaintiff's actions are barred by the applicable statute of limitations.
7. Thompson may be entitled to a credit.

WHEREFORE, Thompson prays that plaintiff take nothing by its Complaint, for costs of this action and for all other proper relief.

COUNTERCLAIMS

For his Counterclaims against Plaintiff/Counterclaim Defendant District, Defendant/Counterclaimant Thompson states:

I. Background

1. Thompson incorporates herein by reference each paragraph of his Answer and Additional Defenses.

2. From April 8, 1996 through December, 2010, Thompson was employed as the Superintendent of schools by the Board of Education (the “Board”) for the District in Indianapolis, Indiana. The Board is the governing body of the District.

3. As Superintendent for the District, Thompson’s job responsibilities were broad and far reaching. They included serving as the chief administrator of the school system; providing leadership in developing and maintaining the best possible educational programs for the District; implementing and supervising support services for students; encouraging positive staff/personnel relations; encouraging positive community and public relations for the District; preparation of the annual budget and direction of the budget process; attendance and participation in Board meetings; communicating with the Board; supervising District services in transportation, food services, data processing, and maintenance; and long-range planning.

4. As Superintendent for the District, Thompson reported to, and was supervised by, the Board.

5. During the term of his employment, Thompson was universally regarded by the Board as a loyal community servant, a good leader, diligent, effective, and efficient. Through all the years of his employment Thompson received exceptional yearly evaluations for his job performance.

6. From the inception of Thompson’s employment by the Board, the terms and conditions of his employment, including his salary and benefits, were established by employment contracts. The initial contract was dated February 26, 1996, and subsequent contracts were entered into in 1998, 2000, 2002, 2003, 2004, 2005, and 2007.

7. With respect to drafting and negotiating each of these employment contracts, the Board was represented by its longtime counsel, Jon M. Bailey from the law firm of Bose,

McKinney & Evans LLP. Mr. Bailey specializes in education law. He was familiar with Thompson's compensation arrangement and advised and counseled the Board through its negotiation and approval of each of Thompson's contracts. Mr. Bailey and the Board signed each of Thompson's contracts.

8. The operative contract for purposes of Thompson's counterclaims against the Board is the Superintendent's Contract of Employment for the period July 1, 2007 through June 30, 2012 (the "2007 Employment Contract"). A true and accurate copy of the 2007 Employment Contract is attached hereto and incorporated herein as **Exhibit A**.

9. The 2007 Employment Contract provides for, *inter alia*, Thompson's annual salary (Section 4(a)); contributions to the Indiana State Teachers' Retirement Fund (ISTRF) (Section 4(e)); deferred compensation pursuant to Sections 401(a), 403(b), and 457 of the Internal Revenue Code (Section 4(f)); severance benefits (Section 4(i)); and compensation for work performed post-retirement as "Superintendent Emeritus" to assist in transition to his replacement (Section 4(m)).

10. During August, 2010, Thompson advised the Board of his intention to retire at the end of 2010.

11. The 2007 Employment Contract provides that upon retirement:

the Board shall utilize the services of the Superintendent for the immediately following one hundred fifty (150) work days in a non-certified position titled "Superintendent Emeritus." The Superintendent will provide these services as an employee of the Board, and the Superintendent shall continue to receive the pay and benefits provided under Paragraph 4 (excepting only Sub-Paragraphs 4(i) and 4(m)) under this Contract as if Superintendent were still employed as Superintendent.

12. Thompson dutifully performed his responsibilities as Superintendent through December 31, 2010, and, thereafter, as Superintendent Emeritus through January, 2011, when the

Board, without any legal basis, demanded that Thompson resign his employment effective January 31, 2011, instructed that no further payments of any kind would be made to Thompson, except for days of service through January 31, 2011, and demanded that Thompson repay much of the compensation and benefits that he was paid for services rendered over the last three years under the 2007 Employment Contract.

13. In light of Thompson's retirement and in accordance with the 2007 Employment Contract, in December, 2010, and January, 2011, the Board paid Thompson certain severance and retirement benefits due and owing to Thompson. But, despite reasonable and proper demand from Thompson to the Board, the Board has failed and refused to pay Thompson other compensation and retirement benefits to which Thompson is clearly entitled under the 2007 Employment Contract.

14. Thompson has performed any conditions precedent to the 2007 Employment Contract and he has not waived his right to receive the compensation and benefits to which he is entitled.

COUNT I
(Breach of Contract)

For Count I of his Counterclaims against the District, Thompson states:

15. Thompson incorporates herein by reference the allegations set forth in paragraphs 1 through 14 of his Counterclaims.

16. Despite reasonable and proper demand, the District has failed and refused to honor its obligations under the 2007 Employment Contract to pay Thompson the following compensation and benefits:

- a. Unpaid salary due for term as Superintendent Emeritus (Section 4.m.2);

- b. 403(b) post-retirement contributions (Section 4.m.1);
- c. the Board's required purchase of an additional year of service in ISTRF for 2010 (Section 4.f); and
- d. severance pay for Board's early termination of contract (Section 6.b.2).

17. The District's failure to honor its obligations under the 2007 Employment Contract constitutes a breach of contract entitling Thompson to recover damages from the District, including, but not limited to, an amount equal to any compensation and benefits owed to him under the 2007 Employment Contract that remain unpaid.

WHEREFORE, Thompson requests the Court award him damages for Count I of his Counterclaims, for the costs of this action and for all other relief that is just and proper.

COUNT II
(Breach of Contract-Indemnity)

For Count II of his Counterclaims against the District, Thompson states:

18. Thompson incorporates herein by reference the allegations set forth in paragraphs 1 through 17 of his Counterclaims.

19. Paragraph 7 of the 2007 Employment Contract, titled "Defense and Indemnification of the Superintendent for Acts in Performance of His Duties as Superintendent," provides in pertinent part:

In all claims, demands, causes of action, and judgments arising out of the performance of the duties set out in Paragraph 3 of this Contract, the Board agrees to provide the Superintendent with legal counsel selected and paid for by the Board and acceptable to the Superintendent; and to defend, indemnify, and hold the Superintendent harmless to the fullest extent permitted by law in all civil and administrative proceedings before a state or federal court.

20. The District brought this lawsuit against Thompson in which it asserts causes of action arising out of Thompson's performance of his duties as Superintendent.

21. Pursuant to paragraph 7 of the 2007 Employment Contract, the District is required to defend and indemnify Thompson for any loss, cost and expense, including reasonable attorney's fees, that he has incurred and will incur as a result of this lawsuit.

WHEREFORE, Thompson requests the Court award him damages for Count II of his Counterclaims, for the costs of this action and for all other relief that is just and proper.

COUNT III
(Violation of Indiana Wage Payment Statute)

For Count III of his Counterclaims against the District, Thompson states:

22. Thompson incorporates herein by reference the allegations set forth in paragraphs 1 through 21 of his Counterclaims.

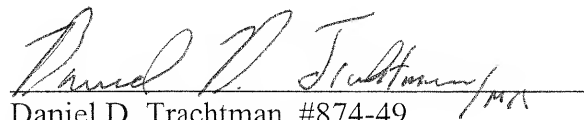
23. Certain of the amounts owed to Thompson under the 2007 Employment Contract constitute "wages," as that term is defined under Indiana law.

24. The District's failure to pay wages owed to Thompson is a violation of Ind. Code § 22-2-5-2.

25. Pursuant to Ind. Code § 22-2-5-2, Thompson is entitled to recover from the District the wages that remain unpaid, and, as liquidated damages for the District's failure to timely pay wages, for each day that the amount due to him remains unpaid, ten percent (10%) of the amount due to him in addition thereto (not exceeding double the amount of wages due), as well as costs and attorney's fees.

WHEREFORE, Thompson requests the Court award him damages for Count III of his Counterclaims, for the costs of this action, liquidated damages and attorney's fees pursuant to Ind. Code § 22-2-5-2, and for all other relief that is just and proper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel D. Trachtman", is written over a horizontal line.

Daniel D. Trachtman, #874-49

Michael Rabinowitch, #18117-49

Attorneys for Defendant/Counterclaim Plaintiff
Terry J. Thompson

WOODEN & McLAUGHLIN LLP
211 N. Pennsylvania St.
One Indiana Square, #1800
Indianapolis, IN 46204-4208
p-317/639-6151
f-317/639-6444

CERTIFICATE OF SERVICE

I certify that the foregoing has been served upon the following counsel by first class

United States mail, postage prepaid, this 25th day of January, 2012:

Linda L. Pence/David J. Hensel/Julie Smith
PENCE HENSEL LLC
135 N. Pennsylvania Street, Suite 1600
Indianapolis, IN 46204

A handwritten signature in black ink, appearing to read "Michael Rabinowitch", written over a horizontal line.

Michael Rabinowitch

SUPERINTENDENT'S CONTRACT OF EMPLOYMENT

By mutual consent of the parties in the manner permitted by Ind. Code 20-28-8-6(3), this contract (hereafter "this Contract") replaces the basic teacher contract for the employment of **Dr. Terry J. Thompson** as Superintendent by the **Board of Education of the Metropolitan School District of Wayne Township**. It replaces all earlier agreements on the subject matter covered including the most recent agreement between the parties executed and approved by the Board on June 20, 2005.

1. Parties to this Contract and Definition of Terms.

The parties to this Contract are the:

"Superintendent" meaning **Dr. Terry J. Thompson** who has been represented and advised in the negotiation of this Contract by attorney **Mary Beth Braitman** from the law firm of **Ice Miller**; and the

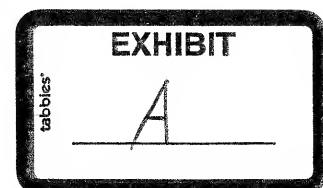
"Board of Education" meaning the governing body of the **Metropolitan School District of Wayne Township** which has been represented and advised in the negotiation of this Contract by attorney **Jon M. Bailey** from the law firm of **Bose, McKinney & Evans LLP**.

"School year" as used in this Contract means a twelve month period beginning on July 1 of one calendar year and concluding on June 30 of the following calendar year.

"School District" as used in this Contract means the **Metropolitan School District of Wayne Township**.

2. Employment of the Superintendent by the Board & Length of this Contract.

The Board employs the Superintendent and the Superintendent agrees to be employed by the Board as the Chief Executive Officer of the Metropolitan School District of Wayne Township for a period beginning on **July 1, 2007** and concluding on **June 30, 2012** subject to the terms of this Contract.



The parties agree that the Superintendent shall provide services on two hundred and ten (210) working days during each school year. These working days shall be scheduled and worked in accordance with a schedule of working days established by the Superintendent so as to insure the full and competent performance of the duties established in Paragraph 3 of this Contract. The Superintendent shall not have paid vacation days, but the Superintendent's two hundred and ten (210) scheduled working days shall include sick leave days pursuant to Sub-Paragraph 4(b) of this Contract and any other paid leave pursuant to Sub-Paragraph 4(c) of this Contract.

If the Superintendent provides services to the Board pursuant to this Contract on more than two hundred and ten (210) days in a school year, he shall be paid at his per diem rate for each day beyond two hundred and ten (210). The Superintendent's per diem rate for purposes of this Paragraph of this Contract shall be computed by dividing the total annual salary amounts paid pursuant to Sub-Paragraphs 4(a), (f), (g), (h), (j), (k) and (l) of this Contract at the time the additional services are provided by two hundred and ten (210).

The Board agrees to review the Superintendent's performance annually and to present the results of this review to the Superintendent in writing at a conference with the Board.

3. Duties of Superintendent.

The duties of the position of Superintendent as set forth in the previously established job description for the position as incorporated into this Contract by this reference:

(h.i.)

shall constitute the duties to be performed by the Superintendent pursuant to this Contract. The review of the Superintendent's performance as provided for in Paragraph 2 of this Contract shall be based upon the duties described in the job description incorporated here.

The Superintendent agrees that his duties as Superintendent represent full time employment and he will not accept outside employment, perform work as an independent contractor, or engage in any other business pursuit involving his personal services, if any of these activities interfere with his performance of his duties as Superintendent.

The parties agree that the position of Superintendent is a unique position in the School District and the Superintendent shall not be required to perform duties under the supervision of another School District employee or perform duties other than those described in the job description incorporated into this Contract as mitigation of the Board's damages or for any other reason, and the Superintendent shall not be transferred, reassigned, or assigned additional duties by the Board without his agreement.

The Superintendent agrees that at all times while he is employed pursuant to this Contract he will fully meet the minimum qualifications for the position of Superintendent which include maintaining the license from the Division of Professional Standards of the Indiana Department of Education required for the position of Superintendent. A failure to maintain such a license shall result in the cancellation of this Contract pursuant to Sub-Paragraph 6(a) of this Contract.

4. **Compensation for the Superintendent's Services.**

In exchange for meeting the qualifications established for the position of Superintendent and his performance of the duties of the position of Superintendent, the Board agrees that the Superintendent shall receive the following as compensation:

a. **Annual Salary.**

The Superintendent shall be compensated on an annual salary basis. The Superintendent shall have an annual salary of **\$226,912**. Effective **July 1, 2008, July 1, 2009, July 1, 2010, and July 1, 2011**, the Superintendent's annual salary paid pursuant to this Sub-Paragraph shall be increased by a percentage calculated by the addition of the percentage increase applied to the salary schedule for the School District's teachers as the result of collective bargaining for the school year addressed, the percentage increase in the matching contribution level under the Code Section 403(b) plan on behalf of teachers by the School District for the school year addressed, and a percentage which is the average percentage of increase of the salary of the School District's teachers as the result of the longevity increment received by the School District's teachers as the result of an additional year of service to the School District. The resulting percentage shall then be applied to an amount which is the sum of:

- (i) the prior year's annual salary paid pursuant to Sub-Paragraph 4(a); plus
- (ii) the 403(b) and 457 Plan elective deferrals of salary made for the Superintendent for the prior year pursuant to Sub-Paragraph 4(f) providing for "Deferred Compensation: Sections 403(b), 401(a), & 457 Plan Contributions."

b. Sick Leave.

In each school year, the Superintendent shall be credited with twelve (12) paid days for personal illness or illness of a member of the Superintendent's family. If unused, sick leave days shall accumulate from year to year.

c. Other Paid & Unpaid Leaves.

The Superintendent shall be entitled to paid or unpaid leave in any other circumstance other than sick leave in which paid or unpaid leave is required by state or federal law or permitted by the Board's policy then in force for paid leave for its administrative employees.

d. Insurance Benefits.

The Board shall pay all but one dollar of the cost for the Superintendent and his eligible dependents' coverage by the group health and dental insurance provided pursuant to the Board's policy establishing benefits for its administrative personnel. The Board shall also pay all but one dollar of the annual premium for the coverage of the Superintendent by group term life and long-term disability policies provided pursuant to the Board's policy establishing benefits for its administrative personnel. The Board agrees that it shall not decrease the amount or scope of coverage provided to the Superintendent pursuant to this Sub-Paragraph without the written approval of the Superintendent. The Superintendent agrees that the selection of insurance carrier providing the insurance coverage required by this Sub-Paragraph shall be by the Board.

e. **Board Assumption of Superintendent's ISTRF Employee Contribution & Reporting to ISTRF.**

In addition to the other compensation for his services as Superintendent provided to the Superintendent by this Contract, the Board shall make any contribution to the Indiana State Teachers' Retirement Fund that would otherwise be required to be paid by the Superintendent.

All payments to the Superintendent coming within the definition of "annual compensation" as defined in Ind. Code 5-10.2-4.3[c] shall be included in the Superintendent's compensation reported to the Indiana State Teachers Retirement Fund. The parties agree that the amounts made available to the Superintendent as additional base salary for Elective Deferrals pursuant to Sub-Paragraph 4(f) titled "**Deferred Compensation: Sections 403(b), 401(a), & 457 Plan Contributions**" shall therefore be included in the Superintendent's "**annual compensation**" as reported to the Indiana State Teachers Retirement Fund for purposes of the calculation of the Superintendent's "**average of annual compensation**" as defined at Ind. Code 5-10.2-4-3 (b).

f. **Deferred Compensation: Sections 403(b), 401(a), & 457 Plan Contributions.**

In addition to the other compensation and benefits provided to the Superintendent pursuant to this Contract, the Board shall provide additional tax dollars for tax-deferred contributions for the Superintendent to retirement plan arrangements described in Sections 401(a), 403(b), and 457 of the Internal Revenue Code (the "Code") for each year of employment by the Board, and for

each post-employment year to the maximum extent permitted by Code Section 403(b). These payments shall be an annual amount equal to the sum of the:

- (i) Maximum salary reduction contributions that the Superintendent could elect to contribute to a Code §403(b) and §457(b) plan ("elective deferrals") for that year; and
- (ii) Maximum non-elective contributions that the Board could make to a Code §401(a) defined contribution plan and a Code §403(b) plan for that year.

The Superintendent shall complete the necessary forms to make elective deferrals to a Code §403(b) plan and a §457(b) plan to the maximum extent allowed by the Code. The Board shall take necessary actions to implement those forms and remit such elective deferrals to these plans. The Superintendent acknowledges that the elective deferrals will be characterized as wages for Social Security, FICA, and as compensation for purposes of contributions to the Indiana State Teachers' Retirement Fund.

The annual non-elective contributions will be contributed by the Board to a Code §403(b) plan, to the maximum extent allowed by the Code, and to a Code §401(a) defined contribution plan, to the maximum extent allowed by the Code. The Board's contributions pursuant to this Sub-Paragraph will be made by January 15 of each school year.

The investment of all contributions pursuant to this Sub-Paragraph shall be made at the direction of the Superintendent.

The Superintendent shall be 100% vested in all elective and non-elective deferrals and in all post-employment contributions regardless of when made.

Notwithstanding anything to the contrary in this Contract, however, the Superintendent shall be entitled to post-employment contributions to the

maximum extent provided under Code Section 403(b) at his termination of employment for any reason, including cancellation of his Contract under Section 6, except for reason of his death under Sub-Paragraph 6(b)(6).

In addition to the above compensation and benefits, the Board shall also purchase each year all available (if any) additional years of service in the Indiana Teachers' Retirement Fund pursuant to Ind. Code 5-10.2-3-1.2. The Board shall also provide additional dollars for the Superintendent to make the maximum additional contributions to the Indiana Teachers' Retirement Fund pursuant to Ind. Code 5-10.2-3-2(c) for each year of employment. The Superintendent shall complete the necessary forms to make the maximum additional contributions to the Indiana State Teachers' Retirement Fund.

g. Auto Allowance.

The Board shall pay the Superintendent one thousand two hundred fifty dollars (\$1,250.00) each month to compensate him for his business use of his automobile. For each school year under the Contract, the auto allowance paid pursuant to this Sub-Paragraph shall increase by the same percentage as the annual salary paid pursuant to Sub-Paragraph 4(a) of this Contract.

The Superintendent's automobile shall be owned, maintained and insured for business use by the Superintendent at his expense. The Board shall provide the Superintendent with a credit card to be used solely for the purchase of gasoline and oil for travel inside the State of Indiana.

h. Annual Health Examination.

In July of each school year the Board shall pay the Superintendent two thousand five hundred dollars (\$2,500.00) to compensate him for the cost of an

annual executive physical examination. The results of this examination shall be exempt from disclosure to anyone other than the Superintendent and shall be exempt from disclosure as a public record pursuant to the exemption for a "personnel record" pursuant to Ind. Code 5-14-3-4(b)(8)a, and a record covered by the doctor-patient privilege exempted by Ind. Code 5-14-3-4(a)(1).

i. Benefits Provided to All Administrators.

The Superintendent shall be entitled to receive the benefits established by the Board for any and all administrative employees of the Board, including those benefits set forth in the Metropolitan School District of Wayne Township Section 457(b) Eligible Deferred Compensation Plan, effective June 1, 2004 ("457(b) Plan"); provided, however, that the parties acknowledge that the benefits set forth under the 457(b) Plan cannot be paid to the Superintendent from the 457(b) Plan due to the applicable limits. The Superintendent shall, therefore, be entitled to the benefit amounts set forth under the 457(b) Plan, except that the Severance Benefit shall be amended for the Superintendent only to replace "\$57" with "100% of the Superintendent's per diem rate" (as determined under Section 2 of this Contract for the school year in which the Superintendent vests in his benefit), and to eliminate the cap on accumulated sick leave days. The Superintendent shall vest in the benefits under this Sub-Paragraph at the earlier of (i) January 15, 2010, (ii) death, (iii) separation from service on account of disability as defined in Sub-Paragraph 6(b)(4), or (iv) involuntary separation of service (except due to cancellation of the Contract pursuant to Sub-Paragraph 6(b)(5)). Separation from service shall have the meaning set forth in the regulations under Section 409A of

the Internal Revenue Code. Benefits shall be paid in a single lump sum to the Superintendent within thirty (30) days after he vests in the benefits.

To the extent that benefits for other administrative employees duplicate a benefit provided pursuant to this Contract, the benefit provided by this Contract shall be the benefit provided to the Superintendent.

j. Business and Professional Activities.

In July of each school year, the Board shall pay the Superintendent the sum of thirty one thousand six hundred thirty two dollars (\$31,632.00) in additional salary, to compensate him for expenses related to his membership in Indiana and national organizations for leaders in education, and his expenses related to attending conferences held by these organizations including registration fees, travel, and food. The Superintendent shall not be required to submit receipts in support of the payment of the sum to be paid pursuant to this Sub-Paragraph, but the Board shall have the option to request an annual list of the memberships and activities supported by this Sub-Paragraph.

For each school year under the Contract, the business and professional activities allowance paid pursuant to this Sub-Paragraph shall increase by the same percentage as the annual salary paid pursuant to Sub-Paragraph 4(a) of this Contract.

k. Reimbursement Fund.

To encourage the Superintendent's continuing professional growth and development, during each school year of the Superintendent's employment pursuant to this Contract, the Board shall pay the Superintendent one thousand

dollars (\$1,000.00) each month in additional salary to compensate him for personal and professional development activities.

For each school year under the Contract, the reimbursement fund allowance paid pursuant to this Sub-Paragraph shall increase by the same percentage as the annual salary paid pursuant to Sub-Paragraph 4(a) of this Contract.

l. Additional Responsibilities. The Board shall pay the Superintendent one thousand dollars (\$1,000.00) each month in additional salary to compensate him for services in the management of Emergency Services Educational Corporation.

For each school year under the Contract, the additional responsibilities allowance paid pursuant to this Sub-Paragraph shall increase by the same percentage as the annual salary paid pursuant to Sub-Paragraph 4(a) of this Contract.

m. Transition to Retirement and Assistance to Successor as Superintendent.

1. At separation from service from the School District after January 15, 2010, or, if earlier, upon involuntary separation from service (except due to cancellation of the Contract pursuant to Sub-Paragraph 6(b)(5), separation from service on account of disability as defined in Sub-Paragraph 6(b)(4), or death:

- (i) The Superintendent shall be paid a lump sum severance equal to his annual salary under Section 4(a) of this Contract the calendar year in which he has a separation of service, plus an amount equal to the maximum elective deferrals that were or could have been made to the Code Section 403(b) and 457(b) plans under Section 4(f) of this Contract the calendar year in which he has a separation from service, plus any additional amounts that would be reported in the Medicare Wage & Tips Box on the Superintendent's W-2 Wage &

Tax Statement from the School District for the calendar year of separation from service as Superintendent not including the severance benefits payable under Sub-Paragraph 4(i) or this Sub-Paragraph 4(m)(i) or (ii).

- (ii) The Board shall provide the sum of fifteen thousand dollars (\$15,000.00) for the Superintendent to do retirement planning.

Separation from service shall have the meaning set forth in the regulations under Section 409A of the Internal Revenue Code. The above amounts shall be paid in a single lump sum to the Superintendent within thirty (30) days after separation from service.

2. At separation from service from the School District, the Board shall utilize the services of the Superintendent for the immediately following one hundred fifty (150) work days in a non-certificated position titled "Superintendent Emeritus." The Superintendent will provide these services as an employee of the Board, and the Superintendent shall continue to receive the pay and benefits provided under Paragraph 4 (excepting only Sub-Paragraphs 4(i) and 4(m)) under this Contract as if Superintendent were still employed as Superintendent. This Sub-Paragraph shall not apply to the extent that the Superintendent had a separation from service due to his death, on account of disability as defined in Sub-Paragraph 6(b)4, or due to cancellation of the Contract under Sub-Paragraph 6(b)5.

5. Extension of this Contract.

The parties agree that on each June 30, this Contract shall automatically be extended one school year on the next day, *i.e.* on July 1, unless a party gives the other

written notice on or before the preceding January 2 that the party does not agree to the automatic extension of this Contract. The parties agree that the operation of this Paragraph shall result in a continuous five (5) school year contract unless one party provides timely written notice to the other pursuant to this Paragraph or this Contract is cancelled pursuant to Paragraph 6 of this Contract. All provisions other than the length of this Contract shall remain the same upon extension by operation of this Paragraph unless the parties specifically agree in writing to the modification of a term in addition to the modification of the length of this Contract.

6. Cancellation of this Contract.

a. Cancellation by the Board for Superintendent's Failure to Meet Minimum Qualification Standards.

The parties agree that it shall be the duty of the Superintendent to maintain the minimum qualification standards for the position of Superintendent described in the job description incorporated into Paragraph 3, such as a superintendent's license from the Division of Professional Standards of the Indiana Department of Education. Therefore, if, at any time the Superintendent no longer meets these minimum qualification standards for the position of superintendent, this Contract shall terminate immediately upon written notice from the Board to the Superintendent without the requirement for any due process or other pre-condition to cancellation or any payment to the Superintendent.

b. Cancellation by the Board for a Reason or Reasons Other Than the Superintendent's Failure to Continue to Meet Minimum Qualification Standards.

In addition to the automatic cancellation of this Contract for failure of the Superintendent to meet minimum qualification standards for continued employment pursuant to Sub-Paragraph 6(a) immediately above, the parties agree that this Contract may be cancelled pursuant to its own terms in any one of the following circumstances:

1. the parties agree in writing to cancel this Contract;
2. the Board provides the Superintendent with a written notice that it is canceling this Contract and pays the Superintendent a lump sum within two and one-half (2 1/2) months after termination of employment with the School District, which is the greater of
 - (ii) one-half of the amount payable under Sub-Paragraphs 4(a), (g), (h), (j), (k) and (l) of this Contract, plus the maximum elective deferrals under Sub-Paragraph 4(f) of this Contract, or
 - (iii) one-half of the amount payable under Sub-Paragraphs 4(a), (g), (h), (j), (k) and (l) of this Contract, plus the maximum elective deferrals under Sub-Paragraph 4(f) of this Contract, that would otherwise be due the Superintendent each year until the Contract's expiration without additional extensions on June 30, 2012, using for purposes of these calculations the most recent increase factor under Sub-Paragraph 4(a);
3. the Superintendent provides the Board with at least ninety (90) days written notice of cancellation; or
4. the Superintendent is determined to be disabled within the terms of the long-term disability policy provided by the Board and he is entitled to benefits under that policy;
5. the Superintendent is convicted of a crime; or
6. the Superintendent dies.

c. **Waiver of Due Process and Breach of Contract Remedies.**

Except as provided in Sub-Paragraph 6(a) of this Contract, the parties agree that the provisions of Sub-Paragraph 6(b) of this Contract shall be the sole and exclusive means of canceling this Contract or obtaining a legal or equitable remedy for breach of this Contract. In exchange for the agreement to this provision by the other party, the Board and Superintendent waive the application of the termination provisions and the hearing requirement for the Superintendent's contract as superintendent found in Ind. Code 20-28-8-7(2), and for the Superintendent's contract as a permanent teacher found in Ind. Code 20-28-7-3; the application of any other procedural requirement or substantive standard imposed by state or federal law; and any cause of action for damages or equitable relief arising out of the cancellation of this Contract except as is necessary to enforce this Contract in an action unrelated to its cancellation.

7. **Defense and Indemnification of the Superintendent for Acts in Performance of His Duties as Superintendent.**

In all claims, demands, causes of action, and judgments arising out of the performance of the duties set out in Paragraph 3 of this Contract, the Board agrees to provide the Superintendent with legal counsel selected and paid for by the Board and acceptable to the Superintendent; and to defend, indemnify, and hold the Superintendent harmless to the fullest extent permitted by law in all civil and administrative proceedings before a state or federal court. The Paragraph shall not require nor prevent the Board from assuming, paying, or re-paying the costs of the defense of a state or federal criminal charge against the Superintendent or a proceeding to revoke the Superintendent's license from the Division of Professional Standards

where there is a dismissal of the charges or there is a finding in the Superintendent's favor.

In the circumstance in which the Superintendent is entitled to a defense, indemnification, or to be held harmless pursuant to this Paragraph, if the Board is advised in writing by its legal counsel of an actual or potential conflict of interest between the Board and the Superintendent which in the opinion of the Board's counsel warrants the employment of separate counsel for the Superintendent, the Board shall employ separate counsel selected by the Superintendent at the Board's expense.

8. Integration of the Full Agreement of the Parties Into This Contract, Authorship of this Contract, and Governing law.

The parties agree that each has had the opportunity to obtain the assistance of counsel in the process of negotiating and preparing the terms of this Contract, has had sufficient time to consider and understand the terms of this Contract, and that this Contract therefore contains all the agreed terms of employment of the Superintendent by the Board and will not be modified except in a written document making specific reference to this Contract and the specific provision to be modified. A modification to this Contract shall be approved by both parties in the same manner that this Contract was approved.

As to the interpretation of this Contract by a court, the parties agree that both parties contributed to the development of the language of this Contract and therefore for purposes of interpretation of this Contract, both parties shall be considered to have been the author of this Contract. The parties further agree that this Contract shall be interpreted and applied using the laws of the State of Indiana.

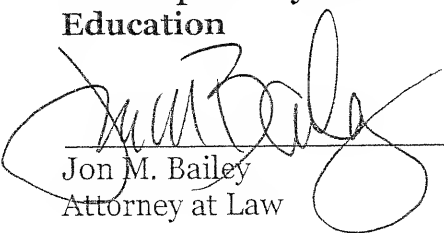
The parties further agree that to the extent that this Contract is inconsistent with the Superintendent's basic teacher contract or any prior contract between the parties, the terms of this Contract shall control.

The parties agree that this Contract shall be reviewed and revised as necessary to comply with Code Section 409A, and any regulations issued thereunder.

9. Contract as a Public Record.


The parties agree that this Contract is a public record under the Indiana Access to Public Records Law, Ind. Code 5-14-3, and Ind. Code 20-28-6-2(b) pertaining to teacher contracts generally. However, all records relating to any exam pursuant to Sub-Paragraph 4(h) or the investment of any funds paid to the Superintendent pursuant to Paragraph 4 shall not be disclosed as a "public record".

**Approved as to form and legality
for adoption by the Board of
Education**


Jon M. Bailey
Attorney at Law

Agreed this 9th day of July, 2007.

Superintendent


Terry J. Thompson

Board of Education

By: 
President of the Board

Paul Calabro
Printed Name

attest:

Michael A. Duce
Secretary of the Board

Mike Nance
Printed Name

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